

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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TRUSTEES OF EMPIRE STATE CARPENTERS ANNUITY,
APPRENTICESHIP, LABOR-MANAGEMENT
COOPERATION, PENSION and WELFARE FUNDS,

Plaintiffs,

ORDER
12-CV-6317 (ADS) (AKT)

-against-

THE FLOORING EXPERTS, INC.,

Defendant.

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APPEARANCES:

Virginia & Ambinder LLP

Attorneys for the Plaintiff

111 Broadway, 14th Floor – Suite 1403

New York, NY 10006

By: Charles R. Virginia, Esq.

Richard B. Epstein, Esq., Of Counsel

NO APPEARANCE:

The Flooring Experts, Inc.

SPATT, District Judge.

On December 21, 2012, the Plaintiffs Trustees of the Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds (“the Plaintiffs”) commenced this action against the Defendant The Flooring Experts, Inc. (“the Defendant”) pursuant to Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(3), Section 9 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 9, and Section 30 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185. The Plaintiffs seek to confirm an arbitration award rendered pursuant to a collective bargaining agreement between the Northeast Regional Council of Carpenters and the Defendant.

On February 21, 2013, the Clerk of Court noted the default of the Defendant and on February 26, 2013, the Plaintiff moved for a default judgment. Thereafter, on February 28, 2013, the Court

referred this matter to United States Magistrate Judge A. Kathleen Tomlinson for a recommendation as to whether the motion for a default judgment should be granted, and if so, (1) whether damages should be awarded, including reasonable attorney's fees and costs, and (2) whether any other relief should be granted.

On August 8, 2013, Judge Tomlinson issued a Report and Recommendation (the "Report") recommending that the Court (1) enter a default judgment against the Defendant and (2) award the Plaintiffs a total of \$257,389.21 in damages. (Report at 1–2.) On August 8, 2013, the Plaintiffs served the Report on the Defendant. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Tomlinson's Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Tomlinson's Report, it is hereby

ORDERED, that Judge Tomlinson's Report and Recommendation is adopted in its entirety. The Court (1) enters a default judgment against the Defendant and (2) awards the Plaintiffs a total of \$257,389.21 in damages; and it is further

ORDERED, that the Clerk of the Court is directed to enter a judgment in favor of the Plaintiffs and against the Defendant The Flooring Experts, Inc., in the total amount of \$257,389.21; and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
September 3, 2013

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge